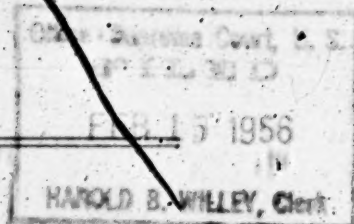


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SUPREME COURT, U.S.



IN THE
Supreme Court of the United States
OCTOBER TERM, 1955
No. 380

EDWIN B. COVEY, Committee of the Person and
Property of NORA BRAINARD, an Incompetent,

Appellant,

—against—

TOWN OF SOMERS,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF NEW YORK

BRIEF FOR APPELLANT

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IN THE
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EDWIN B. COVEY, Committee of the Person and
Property of **NORA BRAINARD**, an Incompetent,

Appellant,

—against—

TOWN OF SOMERS,

Appellee.

BRIEF FOR APPELLANT

Opinions Below

The opinion of the Westchester County Court of New York (R. 12, 13) has not been reported.

The prevailing and dissenting opinions of the Appellate Division of the New York Supreme Court (R. 16, 17) are reported in 283 App. Div. 883 and 129 N. Y. S. 2d 537.

No opinion was rendered by the New York Court of Appeals in affirming the order of the Appellate Division. The memorandum of such affirmance is reported in 308 N. Y. 798. With respect to appellant's motion in the New York Court of Appeals for

reargument and amendment of the remittitur, the memorandum decision of that Court, denying reargument but amending the remittitur, is reported in 308 N. Y. 941.

Jurisdiction

The New York Court of Appeals issued its final order on April 21, 1955. The Notice of Appeal was duly served and thereafter filed on July 15, 1955. Probable jurisdiction was noted by order dated November 7, 1955 (R. 22).

The jurisdiction of this Court is invoked under Title 28 U. S. C. Section 1257 (2).

Constitutional and Statutory Provisions

The validity of Article VII-A, Title 3 of the New York Tax Law is involved and it is claimed by Appellant to be repugnant to the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution, in so far as it is applicable to a known incompetent owner of property. This statute is found in McKinney's Consolidated Laws of New York, Book 59, Part I, Sections 165 through 165 i, pages 426 through 447. The texts thereof are set forth in Appendix "A".

Questions Presented

1. Whether Article VII-A, Title 3 of the New York Tax Law and its application to a property owner known by the Town of Somers to be incompetent, are

repugnant to the United States Constitution in that the act and its application result in a deprivation of property without due process and deny such known incompetent-property owner equal protection of the laws, all of which is prohibited and invalid under Section 1 of the Fourteenth Amendment to the United States Constitution?

2. Whether the taking by the Town of Somers (a Tax District under such statute) of the property of the known incompetent, Nora Brainard, without provision for and the actual appointment of a competent person to protect her interests, was a deprivation of due process and a denial of equal protection of the laws under the Fourteenth Amendment to the United States Constitution?

3. In a judicial proceeding to foreclose a tax lien without providing for the appointment of a competent person to protect the known incompetent's interests, whether the taking by the Town of her property, the value of which was known by it to be far in excess of the aggregate tax liens thereon, constituted a deprivation of due process and a denial of equal protection of the laws under the Fourteenth Amendment to the United States Constitution?

Statement of the Case

Preface: The Facts Are Undisputed.

Because the Appellee filed no affidavit and because it submitted no proof to put in issue the statement of facts set forth in the original papers presented to the Court below, accordingly, the following facts are deemed to be undisputed.

A. The Circumstances Leading to the Taking of the Incompetent's Property by Appellee:

Nora Brainard, a resident in the Town of Somers in the State of New York, had been and was an incompetent for upwards of fifteen years and during that time was known to and by the officials and citizens of the Town of Somers as a person without mental capacity to handle her affairs and to understand the meaning of any notices served upon her personally, by mail or by publication (R. 5, 8, 9, 10).

Nora Brainard was a person of means and at all times financially able to meet her obligations. She owned four parcels of income-producing improved real property, other than the one involved in the instant proceeding, and so could have complied with tax notices, had she been able to comprehend the nature thereof (R. 5, 10, 11). She appears to have lived alone, she had no relative or next-of-kin within the State. There was no one present or available who was able to act in her behalf, to make payment to the Town for her delinquent taxes, or to clear up the tax lien defaults (R. 5, 11).

Although incompetent in every respect for so many years, no one sought to have any Committee appointed for her person or property until months after the judgment in this proceeding had been entered, when the Northern Westchester Bank, a holder of a mortgage on one of her improved parcels of real property, retained a lawyer to foreclose its mortgage by reason of a default thereunder (R. 9). What became obvious to a stranger after a brief investigation, is the very thing which the officials and citizens of the Town of Somers had

been living with over a period of many years. The private litigant knew it should not and could not go further until some person were appointed to protect the rights of the incompetent. But what had the Town done?

On May 8, 1952, the Town instituted the instant proceeding to foreclose many tax liens, one of which was its lien against the parcel of real property owned by the incompetent. Notice of the commencement of such proceeding was given (a) by mail to the owners including the incompetent, (b) by posting a notice in the Post Office, and (c) by publication in two local newspapers (R. 5, 8). When no party or owner filed any answer and the time fixed as the last day for redemption had expired, the Town attorney applied for and obtained an order appointing a Special Guardian to report and protect the interests of persons having any interest in this proceeding who may be in the military service (R. 9), but no such application was made by him for the appointment of a Special Guardian to protect the rights of a person known by him, the Town and its citizens to be incompetent.

On September 8, 1952, judgment of foreclosure was entered and on October 24, 1952, a deed to the property was delivered to the Town (R. 8). Apparently in recognition of the existence of said incompetency, Nora Brainard formally was certified by the County Court on October 29, 1952, as a person of unsound mind. One week later, on November 6, 1952, she was committed to the Harlem Valley State Hospital (R. 8).

Thereafter on February 13, 1953, appellant was appointed and qualified as Committee of the Person and Property of the incompetent. This was pursu-

ant to an order made on January 30, 1953. Sometime prior to September 22, 1953, the Town offered the incompetent's property for sale with a minimum bid price of \$6,500.00. However, the unpaid taxes, interest, penalties, costs of foreclosure, attorneys' fees and maintenance charges on the property accrued to September 22, 1953, aggregated but \$480.00. On September 22, 1953, the Committee's attorney appeared before the Town Board and offered to repay the Town all such taxes, interest, penalties, costs of foreclosure, attorneys' fees and cost of maintenance in consideration for the return of the property to the incompetent's estate. This was refused. Thereafter, the Town rescheduled the sale of the property with a minimum bid price of no less than \$3,500.00 (R. 11).

B. Events Since the Taking of the Property:

Appellant, as such Committee, then made application to the Westchester County Court, where the judgment of foreclosure had been entered, to vacate the judgment and set aside the deed to the Town, and there urged that the Town had not apprised the Court of Nora Brainard's mental condition and that no one had been appointed to act on her behalf. Appellant also contended that the notice, although in compliance with the statute, was inadequate insofar as a known incompetent was concerned and therefore, the statute under which the Town acted was repugnant to the United States Constitution (R. 6). However, the County Court held that the incompetent was not deprived of her constitutional rights and that the statute is valid (R. 12, 13).

Similarly, these points were urged again in the Appellate Division of the New York Supreme Court and

then in the New York Court of Appeals. In each Court the order was affirmed. On the motion for reargument in the Court of Appeals and for amendment of the remittitur, that Court denied reargument but amended the remittitur to show that upon the appeal "there was presented and necessarily passed upon a question under the Constitution of the United States, viz., whether the taking by the Town of Somers, of the property here involved, was, on this Record, a deprivation of due process and equal protection of the laws under the Fourteenth Amendment. The Court of Appeals held that there was no denial of any Constitutional right of the Petitioner". (308 N. Y. 941). (R. 21, 22).

C. Present Status of the Property:

Pursuant to an order granted by the New York Court of Appeals, the Town of Somers was stayed from proceeding with the sale of the property, and by subsequent stipulation of the parties, this stay has been extended pending the review and determination of the appeal to this Court.

Argument

1

Since the Town of Somers and its officials knew that Nora Brainard was incompetent and unable to understand the nature of the notice, its strict compliance with the statute with respect to notice was but a mere gesture, and resulted in a deprivation of her property without due process.

This statute, insofar as here pertinent, generally provides for the judicial foreclosure of tax liens on real property. Provision for notice is made by (1) publication, (2) posting and (3) mailing. The prescribed notice is to the effect that unless the aggregate amount of taxes, assessments and accrued legal charges are paid within seven weeks, or an answer interposed, the ownership of the realty will pass to the taxing district. If final payment is not made or if no answer is interposed, a final judgment is entered vesting absolute title to the real property in the taxing district and a deed to the property is then delivered to such taxing district. The statute then declares these provisions to be applicable to, valid and effective with respect to all defendant-owners, even though one or more of them be infants or incompetents, and further that all persons including incompetents who may have had any right, title, interest, claim, lien or equity of redemption in such parcel of realty shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

In effect then, the statute provides for a vesting of title in the taxing district which shall be absolute and beyond dispute. Although a number of harsh and obviously shocking results are reported,¹ we do not contend for, and this case does not involve the invalidity of the taxing statute *per se*. However, we do contend that its precise and particular application to the instant circumstances deprived a known incompetent of her property without due process.

We readily recognize that all persons within the taxing district are subject to taxation, including insane persons, and that it is no excuse for non payment of taxes that an owner of property is insane (2 Cooley on Taxation, 1257, Section 585, and 3 Cooley on Taxation, 2532, Section 1272; Fourth Edition). When, however, the statute provides for a vesting of title in the taxing district which shall be absolute and beyond dispute, this is the equivalent of forfeiture. In 3 Cooley on Taxation, 2673, Section 1350, it is stated:

“But if by forfeiture is understood the vesting in the state a title which shall be absolute and beyond dispute, the question presented is different. It is impossible that there can be any right to declare a forfeiture, except as a result of an adjudication to which the owner was a party, which has determined that default, upon which

¹ *City of New York v. Nelson*, 309 N. Y. 94, where the City for total arrears of \$887.00 acquired properties assessed at \$52,000.00 and one parcel was resold by it in excess of the assessed valuation.

City of New York v. Brown, not officially reported but see “The Search” published by City Title & Insurance Co., Volume 3, No. 4, Nov.-Dec. 1955, where the City for total arrears of \$85.20 in water taxes acquired property valued at \$8,000.00 and assessed at \$10,000.00.

the forfeiture was based, exists in fact, and that the requisite steps which were to precede the forfeiture had actually been taken. In some judicial tribunal the party whose freehold is seized has a right to a hearing on these questions: a constitutional right, if constitutional protections to property are of any avail."

Apparently the Legislature, in enacting this novel legislation providing for forfeiture of property, took cognizance of this principle and provided for the judicial foreclosure proceeding with notice to be given by three separate methods. Although the notice in the instant case was in strict compliance with the statute, it does not satisfy due process requirements insofar as it is applicable to Nora Brainard, a known incompetent.

It has been stated that due process is both a substantive and procedural concept.

WE THE JUDGES by Justice William O. Douglas
at page 263.

In *Mullane v. Central Hanover Trust Company*,
339 U. S. 306, this Court stated:

"Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case" (p. 313):

"Against this interest of the State we must balance the individual interest sought to be protected by the Fourteenth Amendment. This is

defined by our holding that 'The fundamental requisite of due process of law is the opportunity to be heard'. *Grannis v. V. Ordean*, 234 U. S. 385, 394. This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest" (p. 314).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonable calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. (Citing cases). The notice must be of such nature as reasonably to convey the required information, *Grannis v. Ordean*, *supra*, and it must afford a reasonable time for those interested to make their appearance, (citing cases). But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied. 'The criterion is not the possibility of conceivable injury but the just and reasonable character of the requirements, having reference to the subject with which the statute deals.' (citing cases).

"But when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, (citing cases), or where

conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes" (pp. 314-315).

The Appellee's notice to the incompetent was, in effect, that she would forfeit her property if she failed to pay the aggregate amount of the lien or file an answer within the prescribed statutory period. Here, Appellee knew, when it was giving the pro forma statutory notice to the incompetent, that she was incapable of understanding the nature thereof and incapable of protecting her property and interests therein. Such notice, although in compliance with the statute, was but a mere gesture.

Indeed, the Town with full knowledge that the incompetent's property would be forfeited it but for a fraction of its true value in unpaid taxes, did not notify the Court of her mental condition. It should have done so.

28 *American Jurisprudence*, Section 109, page 741.

Had it done so, then the Court would have appointed one who could adequately protect her rights and interest in the proceeding.

44 *Corpus Juris Secundum* 303, Section 141;
American Mortgage Co. v. Dewey, 106 App.
 Div. 389, 94 N. Y. S. 808.

Apparently the New York Court of Appeals by its affirmance without opinion has sanctioned the Appellee's failure to have a Special Guardian or other competent person appointed for the receipt of notice and the protection of the known incompetent's inter-

ests. Our research discloses that in every instance wherever any interest, right or claim of a known incompetent may be involved, provision is made either in the statute or by decisional law for the appointment of a suitable and proper person to receive notice and protect such interest, right, claim or title of the known incompetent. The New York decisional law is nothing more than an enunciation of the common law as it had been for many years and as borrowed from the common law of England.

See:

2 CARMODY'S NEW YORK PRACTICE, Section 561
at pages 951 and 952; and
American Mortgage Co. v. Dewey, 106 App.
Div. 389, 94 N. Y. S. 808,

wherein the Court stated:

"In the nature of things it was impossible for the Legislature to meet every condition that might arise as affecting the person or property of incompetents, whether judicially declared insane or not; but it does not follow, because we cannot find express provision in the Code of Civil Procedure conferring the power or regulating the mode or manner of exercising it to protect the interests of lunatics and incompetents, that, therefore the Court lacks the power to protect such persons in some adequate manner. It has been repeatedly held that the power exists in the Court, and where there are provisions in the Code of Civil Procedure describing the way in which this power shall be exercised, those provisions must be complied with and followed; but where there is an absence of provisions regu-

lating the exercise of the power, then it becomes the duty of the Court to determine the mode or manner in which the power can be best exercised to effect the end desired. In other words, the power is inherent in the Court and is not conferred by the Code of Civil Procedure, but the latter in many instances merely prescribes when and how it shall be invoked." (at p. 392 of 106 App. Div.)

"Nor do we think that merely receiving the summons is all that the person designated to represent a defendant who has substantial interests in the controversy and who is *non compos mentis*, but who has not been judicially declared insane, is required to do. We think the provisions in the order should be sufficiently broad to enable him to look after the interests of such defendant at every stage of the action. In a foreclosure suit this includes not only the duty of representing the incompetent up to the time of the judgment in foreclosure and sale, but also interests the incompetent may have in the surplus realized after a sale." (at p. 393 of 106 App. Div.)

II

Result of holding that the particular notice as applied to a known incompetent is invalid.

The salutary aims of the statute would not be nullified by a ruling from this Court that insofar as a known incompetent was concerned, the strict compliance with the notice requirements does not constitute

due process. Such a ruling will not render havoc with titles to real property so acquired. This statute may be constitutional in every respect except when its requirements of notice are applied to a known incompetent.

Conclusion

Strict compliance with notice requirements of the taxing statute is incompatible with the due process requirements of the Fourteenth Amendment as a basis for adjudication depriving a known incompetent of substantial property rights. Accordingly, the judgment should be reversed and the cause should be remanded to the State Court for further proceeding.

Dated: February 14, 1956.

Respectfully submitted,

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APPENDIX A

1. Relevant Provisions of the Constitution:

AMENDMENT 14

Section 1. * * *; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Applicable Statute:

TITLE 3: FORECLOSURE OF THE TAX LIEN BY ACTION IN REM

§ 165. FORECLOSURE BY ACTION IN REM

Whenever it shall appear that a tax district owns a tax lien which has been due and unpaid for a period of at least four years from the date on which the tax, assessment or other legal charges represented thereby became a lien, such tax lien, except as otherwise provided by this title, shall be summarily foreclosed by the tax district in the manner provided in this title notwithstanding the provisions of any general, special or local law and notwithstanding any omission to hold a tax sale prior to such foreclosure. Ownership of a transfer of tax lien or of a tax sale certificate or of any other instrument evidencing such tax lien by the tax district issuing the same shall be evidence of the fact that the tax, assessment or other legal charges represented thereby have not been paid to the tax district or assigned by it.

§ 165-a. FILING OF LIST OF DELINQUENT TAXES

1. Within six months after the date of adoption of a resolution electing to adopt title three hereof and annually thereafter, the collecting officer of such tax district shall file in the office of the clerk of the county in which the property subject to such tax liens is situated, a list of all parcels of property, except those excluded from such list as hereinafter provided, affected by unpaid tax liens held and owned by such tax district which on the date of filing shall have been unpaid for a period of at least four years or more after the date when the tax, assessment or other legal charge represented thereby became a lien, provided, however, in a tax district having a population of more than fifty thousand according to the latest federal census all such parcels need not be included in the list first filed after the adoption of such resolution but may be included in more than one list, in which event each such list shall comprise all such parcels within a particular area in such district, except those excluded from such list as hereinafter provided. Such area shall constitute an existing geographical area such as a city, town, village, ward, section or other appropriate area bounded or defined by law. All lists covering all such parcels in all such areas in such district shall be filed within one year from the date of adoption of the resolution of election. Before filing any list of parcels of property in any year, the collecting officer with the approval of the governing body of the tax district may exclude particular parcels therefrom. The collecting officer when requesting approval for the exclusion of any particular parcel shall state the reasons therefor in writing. No parcel shall be excluded from any such list for any reason, other than the following: (1) that a question has been raised by a person having

an interest in such parcel as to the validity of the tax lien affecting such parcel, or (2) that the tax district has agreed to accept payment of delinquent taxes, assessments or other legal charges in installments of at least two years of such arrears with each year of current taxes, assessments or other legal charges and there has been no default in such installments, or (3) that an agreement has been duly made and executed and filed with the tax district for the payment of such delinquent taxes, assessments¹ or other legal charges in installments, the first of which shall be in an amount equal to at least twenty-five per centum of such arrears payable upon the making and filing of the installment agreement, and the balance of which shall be in amounts equal to at least two years of such arrears and payable with each year of current taxes, assessments or other legal charges and there has been no default in such installments, or (4) that within two years last passed the tax district had sold or assigned a tax lien owned and held by the tax district to a person who had not completed all of the proceedings necessary to enforce such tax lien. The collecting officer shall transmit a list of all parcels within the particular area selected which are affected by tax liens which shall have been unpaid for a period of at least four years and an additional list which shall designate which of the parcels on the first list should be excluded. Such list of all parcels and such additional list, if any, shall not be acted upon at the meeting of the governing body at which they appear on the calendar for the first time, nor shall such body approve the exclusion of any parcel at any succeeding meeting unless one week has elapsed after the meeting when

¹ So in original. Probably should read "assessments".

such exclusion was first submitted for approval. The approval of such exclusion by the governing body shall be by resolution recorded in its minutes stating the reason therefor. All parcels included in any list shall be numbered serially. The collecting officer shall file a certified copy of each list in the office of such collecting officer, in the office of the attorney for such tax district and in the office of the collecting officer of any other tax district having a right to assess any of the parcels described upon such list. The inadvertent failure of the collecting officer to include all parcels in such list, or where more than one list is filed all such parcels in the designated area, shall not affect the validity of any proceeding brought pursuant to this title. Each such list shall be known and designated as the "List of Delinquent Taxes" and shall bear the following caption:

"..... court, county. In the matter of foreclosure of tax liens pursuant to article seven-a, title three of the tax law by (insert name of tax district.) List of delinquent taxes". Where the list comprises parcels in a particular area the caption shall also generally describe the area covered by the list. Each list shall also contain as to each parcel, the following:

(a) A brief description sufficient to identify each parcel affected by such tax lien. A description by stating the lot, block and section number or other identification numbers of any parcel upon a tax map, or a lot number or other identification number of any tract, the map of which is filed in the county clerk's or register's office, shall be a sufficient description.

(b) The name of the last known owner of such parcel as the same appears on the assessment roll of the

tax district for the year preceding the calendar year in which such list is filed.

(c) A statement of the amount of each tax lien upon such parcel including those which shall have been due and unpaid for less than four years together with the date or dates from which and the rate and rates at which interest and penalties shall be computed.

Such list of delinquent taxes shall be verified by the affidavit of the collecting officer. The filing of such list of delinquent taxes in the office of the clerk of the county in which the property subject to such tax liens is situated shall constitute and have the same force and effect as the filing and recording in said office of an individual and separate notice of pendency of action and as the filing in the county court of such county or, in the city of New York, in the supreme court of such county of an individual and separate complaint by the tax district against the real property therein described, to enforce the payment of the delinquent taxes, assessments or other lawful charges which have accumulated and become liens against such property.

Each county clerk with whom such list of delinquent taxes is filed shall index it in a separate book kept for that purpose to the name of the taxing district filing such list which shall constitute due filing, recording and indexing of such notice in lieu of any other requirement under section one hundred twenty-two of the civil practice act or otherwise. The county clerk shall be entitled to a fee of ten dollars for such receiving, filing and indexing of each such list in lieu of any other fees to which he might otherwise be entitled for such services except in counties having a block and

section system of indexing lis pendens and in such counties the fee for filing shall be as provided by law.

The county court, except in the counties of the city of New York, and in those counties, the supreme court, is hereby given jurisdiction of actions authorized by this title:

2. Every person including a tax district other than the one foreclosing having any right, title or interest in, or lien upon, any parcel described in such list of delinquent taxes may redeem such parcel by paying all of the sums mentioned in such list of delinquent taxes before the expiration of the redemption period mentioned in the notice published pursuant to section one hundred sixty-five-b, or may serve a duly verified answer upon the attorney for the tax district setting forth in detail the nature and amount of his interest and any defense or objections to the foreclosure of the tax lien. The caption of such answer shall contain a reference to the serial number or numbers of the parcels concerned. Such answer must be filed in the office of the county clerk and served on the attorney for the tax district foreclosing within twenty days after the date mentioned in the notice published pursuant to section one hundred sixty-five-b as the last day for redemption. In the event of failure to redeem or answer by any person having the right to redeem or answer such person shall be in default and shall be barred and forever foreclosed of all his right, title and interest in and to the parcels described in such list of delinquent taxes and a judgment in foreclosure may be taken as herein provided. Upon redemption as permitted by this section, the person redeeming shall be entitled to a certificate thereof from the collector of the tax district describing the

property in the same manner as it is described in such list of delinquent taxes. Upon the filing of such certificate with the county clerk, the county clerk shall note the word "redeemed" and the date of such filing opposite the description of said parcel on such list. Such notation shall operate to cancel the notice of pendency of action with respect to such parcel.

§ 165-b. PUBLIC NOTICE OF FORECLOSURE

Upon the filing of such list in the office of the county clerk, the collecting officer forthwith shall cause a notice of foreclosure to be published at least once a week for six successive weeks in two newspapers designated by him and published in the tax district. If there is only one newspaper published in such tax district, the collecting officer shall cause such notice to be published in such newspaper and in addition thereto in one other newspaper published in the county in which such tax district is situated. If no newspaper is published in the tax district, the collecting officer shall cause such notice to be published in two newspapers published in the county in which such tax district is situated and circulating in such tax district. If only one newspaper is published in said county then the collecting officer shall cause such notice to be published in such newspaper and also in a newspaper published in an adjoining county, and if no newspaper is published in such county, he shall cause the same to be published in two newspapers published in an adjoining county. In New York and Bronx counties the newspapers to be designated for the publication of such notice or any other public notice required pursuant to this article shall be the daily law journal designated by the justices of the appellate division of the first judicial department and

another newspaper designated by said justices pursuant to the provisions of subdivisions one and two of section ninety-seven of the judiciary law. Such notice shall be in substantially the following form:

..... court, county.

NOTICE OF FORECLOSURE OF TAX LIENS BY

..... (here insert name of tax district)

BY ACTION IN REM

Please take notice that on the day of, the (insert name of collecting officer) of (insert name of tax district) pursuant to law filed with the clerk of county, a list of parcels of property affected by unpaid tax liens held and owned by said which on such date had been unpaid for a period of at least four years after the date when the tax, assessment or other legal charge represented thereby became a lien. Said list contains as to each such parcel, (a) a brief description of the property affected by such tax lien, (b) the name of the last known owner of such property as the same appears on the assessment roll of said for the last calendar year, or a statement that the owner is unknown if such be the case, (c) a statement of the amount of such tax lien upon such parcel including those which shall have been due for less than four years together with the date or dates from which, and the rate or rates at which, interest and penalties shall be computed.

All persons having or claiming to have an interest in the real property described in such list of delinquent taxes are hereby notified that the filing of such list of delinquent taxes constitutes the commencement by said of an action in the

court, county to foreclose the tax liens therein described by a foreclosure proceeding in rem and that such list constitutes a notice of pendency of action and a complaint by the said against each piece or parcel of land therein described to enforce the payment of such tax liens. Such action is brought against the real property only and is to foreclose the tax liens described in such list.

No personal judgment shall be entered herein for such taxes, assessments or other legal charges or any part thereof.

This notice is directed to all persons having or claiming to have an interest in the real property described in such list of delinquent taxes and such persons are hereby notified further that a certified copy of such list of delinquent taxes has been filed in the office of the (here insert title of the collecting officer) of said and will remain open for public inspection up to and including the day of (here insert a date at least seven weeks from the date of the first publication of this notice), which date is hereby fixed as the last day for redemption.

And take further notice that any person having or claiming to have an interest in any such parcel and the legal right thereto may on or before said date redeem the same by paying to the said (here insert title of collecting officer) the amount of all such unpaid tax liens thereon and in addition thereto all interest and penalties which are a lien against such real property, computed to and including the date of redemption. In the event that such taxes are paid by a person other than the record owner of such property, the person so paying shall be entitled to have the tax liens affected thereby satisfied of

record or to receive an assignment of such tax liens evidenced by a proper written instrument.

Every person having any right, title or interest in or lien upon any parcel described in such list of delinquent taxes may serve a duly verified answer upon the attorney for the (here insert name of tax district) setting forth in detail the nature and amount of his interest and any defense or objection to the foreclosure. Such answer must be filed in the office of the county clerk and served upon the attorney for the tax district foreclosing within twenty days after the date above mentioned as the last day for redemption. In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his right, title and interest and equity of redemption in and to the parcel described in such list of delinquent taxes and a judgment in foreclosure may be taken by default.

.....

 (Name of office of collecting officer)

.....
 Attorney for..... (tax district)

Address:

The collecting officer shall on or before the date of the first publication of the notice above set forth cause a copy of such notice to be posted once in the office of the collecting officer, in the county court house of the county in which the property subject to such tax lien is situated and in three other conspicuous places within such tax district and shall cause a copy of such notice to be mailed to the last known address of

each owner of property affected thereby, as the same appears upon the records in the office of the collecting officer, and in the event that the name or address of such owner does not appear in such records, the taxing officer shall so state in an affidavit which shall be filed in the office of the county clerk. The collecting officer shall cause to be inserted with or attached to such notice a statement substantially as follows:

To the party to whom the enclosed notice is addressed:

You are the presumptive owner or lienor of one or more of the parcels mentioned and described in the list referred to in the enclosed notice.

Unless the taxes and assessments and all other legal charges are paid, or an answer interposed, as provided by statute, the ownership of said property will in due course pass to

(name of municipality foreclosing)
as provided by the tax law of the state of New York.

Dated,

.....
Collecting officer

§ 165-c. NOTICE TO MORTGAGEE OR LIENOR

At any time after the enactment of this article, any owner of real property in such tax district, any mortgagee thereof, or any person having a lien or claim thereon, or interest therein may file with the collecting officer a notice stating his name, residence and post office address and a description of the parcel in which such person has an interest, which notice shall continue in effect for the purposes of this section for a period of five years, unless earlier cancelled by such person. The collecting officer shall mail to each such person

forthwith after the completion and filing of the list of delinquent taxes as herein provided; a copy of each notice required under this title and affecting such parcel. The failure of the collecting officer to mail such notice as herein provided shall not affect the validity of any proceeding brought pursuant to this title.

§ 165-d. FILING OF AFFIDAVITS

All affidavits of filing, publication, posting, mailing or other acts required by this title shall be made by the person or persons performing such acts and shall be filed in the office of the county clerk of the county in which the property subject to such tax lien is situated and shall together with all other documents required by this title to be filed in the office of such county clerk, constitute and become a part of the judgment roll in such foreclosure action.

§ 165-e. TRIAL OF ISSUES

If a duly verified answer is served upon the attorney for such tax district within the period mentioned in the notice published pursuant to section one hundred sixty-five-b the court shall summarily hear and determine the issues raised by the complaint and answer in the same manner and under the same rules as it hears and determines other actions, except as in this act otherwise provided. Upon such trial, proof that such tax was paid, together with any interest or penalty which may have been due, or that the property was not subject to tax shall constitute a complete defense. Whenever an answer is interposed as herein provided, the defendant shall have an absolute right to the severance of the action as to any parcel or par-

cels of land in which he has an interest, upon written demand therefor filed with or made a part of his answer.

§ 165-f. PREFERENCE OVER OTHER ACTIONS

Any action brought pursuant to this title shall be given preference over all other causes and actions, and no such action shall be referred except to an official referee and the supreme court and county court are hereby given jurisdiction to make such reference.

§ 165-g. PRESUMPTION OF VALIDITY

It shall not be necessary for the tax district to plead or prove the various steps, procedures and notices for the assessment and levy of the taxes, assessments or other lawful charges against the lands set forth in the list of delinquent taxes and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in the tax or in the sale thereof must particularly specify in his answer such jurisdictional defect or invalidity and must affirmatively establish such defense. The provisions of this title shall apply to and be valid and effective with respect to all defendants even though one or more of them be infants, incompetents, absentees or non-residents of the state of New York.

§ 165-h. FINAL JUDGMENT

(1) The court shall have full power to determine and enforce in all respects the priorities, rights, claims and demands of the several parties to said action, as the same shall exist according to law, including the priorities, rights, claims and demands of the defendants as between themselves, and in a proper case to

direct a sale of such lands and the distribution or other disposition of the proceeds of the sale. The court shall further determine upon proof and shall make findings upon such proof whether there has been due compliance by the tax district with the provisions of this title.

(2) Where as to any parcel included in the list described in section one hundred sixty-five-a of this chapter an answer has been interposed by a party other than a tax district and the court shall determine that such party has any right, title, interest, claim, lien or equity of redemption in such parcel, the court shall make a final judgment directing the sale of such parcel.

(3) Where as to any parcel an answer has been interposed by another tax district and the court shall determine that such other tax district has an interest in such parcel and no party (other than a tax district) shall have answered, then and in that event the tax districts having an interest in such parcel may by agreement between themselves provide (a) for a conveyance without sale of any such parcel to one of such tax districts free and clear of any right, title or interest in or lien upon such parcel of such tax districts; or (b) for a conveyance without sale of any such parcel to one of such tax districts subject to any right, title or interest in or lien upon such parcel of such other tax district or districts. In either of such events the court shall in its judgment expressly dispense with the sale and direct the making and execution of a conveyance by the collecting officer in accordance with such agreement. In the absence of such an agreement the court shall make a final judgment directing the sale of such parcel.

(4) Any sale directed by the court shall be at public auction by the collecting officer. Public notice thereof shall be given once a week for, at least three successive weeks in a newspaper published in the tax district, if any, or, if none, in a newspaper published in the county in which such tax district is situated. The collecting officer shall receive no fee or compensation for such service. The description of the parcel offered for sale in such notice shall be that contained in the list of delinquent taxes with such other description, if any, as the court may direct.

(5) In directing any conveyance pursuant to this title, the judgment shall direct the collecting officer of the tax district to prepare and execute a deed conveying title to the parcel or parcels concerned. Said title shall be full and complete in the absence of an agreement between tax districts as herein provided that it shall be subject to the tax liens of one or more tax districts. Upon the execution of such deed the grantee shall be seized of an estate in fee simple absolute in such parcel unless expressly made subject to tax liens of a tax district as herein provided, and all persons, including the state of New York, infants, incompetents, absentees and non-residents, except such tax district, who may have had any right, title, interest, claim, lien or equity of redemption in or upon such parcel, shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

(6) The court shall make a final judgment awarding to such tax district the possession of any parcel described in the list of delinquent taxes not redeemed as provided in this title and as to which no answer

is interposed as provided herein. In addition thereto such judgment shall contain a direction to the collecting officer of the tax district to prepare, execute and cause to be recorded a deed conveying to such tax district full and complete title to such lands. Upon the execution of such deed, the tax district shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

7. Every deed given pursuant to the provisions of this section shall be presumptive evidence that the action and all proceedings therein and all proceedings prior thereto from and including the assessment of the lands affected and all notices required by law were regular and in accordance with all provisions of law relating thereto. After two years from the date of the record of such deed, the presumption shall be conclusive, unless at the time that this subdivision takes effect the two-year period since the record of the deed has expired or less than six months of such period of two years remains unexpired, in which case the presumption shall become conclusive six months after this subdivision takes effect. No action to set aside such deed may be maintained unless the action is commenced and a notice of pendency of the action is filed in the office of the proper county clerk prior to the time that the presumption becomes conclusive as aforesaid.

§ 165-10. WITHDRAWAL OF PARCELS FROM FORECLOSURE.

The collecting officer of any tax district may at any time prior to final judgment withdraw any parcel from a proceeding under this title with the approval by resolution of the governing body stating the reason therefor. No parcel shall be withdrawn from such proceedings except for one of the reasons set forth in subdivision one of section one hundred sixty-five-a as a reason for exclusion of a parcel from a list of delinquent taxes. Upon such withdrawal the tax liens on any parcel so withdrawn shall be and remain the same as if no action had been instituted and the collecting officer shall issue a certificate of withdrawal which shall be filed with the county clerk who shall note the word "withdrawn" and the date of such filing opposite the description of such parcel on the list. Such certificate may include one or more parcels appearing on any list. Such notice shall operate to cancel the notice of pendency of action with respect to any such parcel.